The Kendall Company *and* United Paperworkers International Union, AFL-CIO *and* Gary B. Chalker. Cases 10-CA-16802 and 10-CA-17396

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND HUNTER

On 9 August 1982 Administrative Law Judge Lawrence W. Cullen issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge except as modified herein.

We agree with the Administrative Law Judge's findings that Respondent violated Section 8(a)(3) and (1) of the Act by issuing a verbal warning to Gary B. Chalker on 17 January 1981,[1] for excessive telephone usage; issuing an unsatisfactory performance evaluation of Chalker on 7 February; issuing a written warning to Chalker on 10 February; and issuing a warning letter and 3-day suspension to Chalker on 11 March;[2] refusing to transfer Chalker from the second to the third shift on 17 August; and issuing a written warning and 10-day suspension to Chalker on 27 August.[3] However, contrary to the Administrative Law Judge, we cannot find that Respondent violated Section 8(a)(1) of the Act by "indirect interrogation" of employee Tanya Hickson by Supervisor Guest, or by refusing to allow Chalker to wear a union keychain.[4] Nor can we agree with the Administrative Law Judge that the verbal warning issued to Chalker for leaving the work area early for break on 29 July was not a violation of Section 8(a)(3) and (1) of the Act.[5]

1. The complaint alleges that Respondent twice unlawfully interrogated employee Tanya Hickson, an orbitseal packer and an informally designated leadperson in department 37. The first interrogation was allegedly conducted by Terri Marshall (Montgomery), who was then the production supervisor of department 37, and the second, by George Guest, Respondent's department supervisor. The Administrative Law Judge dismissed the first allegation of interrogation,[6] but found that Respondent violated Section 8(a)(1) of the Act by the second interrogation.

In January, according to the credited testimony, Hickson, while standing near her machine, initiated a conversation with Montgomery concerning production. Upon Montgomery's suggestion, they went into an office where, during the discussion, Hickson said she thought that part of the production problems was caused by dissension among the employees concerning the Union. Hickson volunteered that she had signed a union card and stated, "I will tell you this, I did sign a card and I wish I hadn't done it." Montgomery then told Hickson that Guest had some information which Hickson could read, and encouraged her to go to the union meetings to find out more about the Union.

Shortly thereafter, Hickson was called into Guest's office and was asked why production was not "being met." Again, in the course of conversation, Hickson admitted signing a union card and stating she wished she had not done so. Guest told her she was signing her rights away, but that the signing of the card did not matter, since the election had not yet taken place.

The Administrative Law Judge found that further interrogation of Hickson by Guest was calculated to lead Hickson into a discussion of Respondent's employees' union activities. The Administrative Law Judge reasoned that, in the absence of any evidence presented by Respondent justifying the further interrogation, Respondent's "indirect interrogation" constituted a violation of Section 8(a)(1).

We reverse.

[1] All dates hereinafter refer to 1981, unless otherwise indicated.

[2] We note that, shortly before the 11 March suspension, Chalker passed out handbills to employees and supervisors at the plant entrance. According to Chalker's uncontroverted testimony, on 5 March he gave union literature to Supervisors Don Montgomery, Terri Marshall, Wade Walker, and Curtis Williams; and on 11 March he passed out union literature to Williams and Walker. According to testimony of Respondent's supervisor, Terri Boyduy, Chalker's handbilling activities were discussed at supervisory meetings.

[3] Although the complaint did not allege the 27 August written warning to be a violation of Sec. 8(a)(3) and (1) of the Act, the Administrative Law Judge so found in his Conclusions of Law. We find that this violation was fully litigated, as the same document contained both the suspension and written warning of 27 August and, accordingly, we adopt the Administrative Law Judge's conclusion as to the 27 August written warning.

[4] Inasmuch as we find both that Respondent did not violate Sec. 8(a)(1) of the Act by its alleged interrogation of Hickson by Guest or by its refusal to allow Chalker to wear a union keychain, we do not rely upon the Administrative Law Judge's finding in sec. III,B, par. 13, of his Decision that these acts constituted evidence of union animus on the part of Respondent.

[5] In light of our finding of an additional 8(a)(3) and (1) violation and our dismissal of two 8(a)(1) violations found by the Administrative Law Judge, we shall issue new Conclusions of Law.

[6] No exception was taken to the finding that this alleged interrogation did not constitute a violation of Sec. 8(a)(1) of the Act.

> [I]n order to evaluate fully an interrogation's tendency to coerce, it is necessary to examine all of the surrounding circumstances. Actual coercion is not necessary but, rather, the true test is whether the questioning tends to be coercive. . . . The Board has held that, where the interrogation is isolated and occurs in an atmosphere free of coercive conduct, the questioning is not *per se* unlawful.[7]

It was Hickson who began the conversation about production with Montgomery, and Hickson who raised the subject of the Union by suggesting to Montgomery that dissension among the employees might have been the reason that production was not being met. We find that Guest, acting for Respondent, was entitled to inquire further of Hickson as to whether union activity was actually interfering with production.[8] Guest did respond to Hickson's statement that she had signed a card by saying that she was signing her rights away. Such a personal opinion in response to Hickson's admitted regret over having signed a card does not constitute a threat or imply coercion. Further, it was immediately qualified when Guest stated that it did not matter since the election had not yet taken place. We emphasize that, during their brief conversation, Guest never questioned Hickson about her union sentiments and activities or those of other employees; nor did Hickson volunteer information about other employees. Taking all this into account, we find the circumstances surrounding the Guest-Hickson conversation to be free from coercion and, accordingly, we shall dismiss the Administrative Law Judge's finding that Respondent thereby violated the Act.

2. The Adminstrative Law Judge found that Respondent violated Section 8(a)(1) of the Act when it required Chalker to remove union insignia while on the premises. Chalker was employed as a machine adjustor in Respondent's department 37. Shortly after the union campaign had commenced in early January, he wore a union keychain on his buttoned shirt pocket. He was told by his supervisor, Montgomery, to remove it "because it was not part of the uniform"; i.e., a dress code violation.[9] On that same day, Chalker asked Montgomery whether the stickpin he noticed another employee wearing on her collar was part of the uniform. Montgomery replied that it was not and asked the employee to remove it. Chalker testified that he had observed the employee wearing the stickpin for 6 days and that he had observed other employees wearing keychains with a plastic disk bearing the name "Kendall" attached directly to a metal keyring. Machine adjustors Meeks and Oglesby testified that they both wore personal items with their uniform (Meeks had worn a National Rifle Association belt buckle for the past 3 years, and Oglesby, personal keys on a keychain holding work-related keys). All three testified that they and other employees wore various work-related items on their person such as pens, rulers, tool pouches, and tools. Chalker testified that the keychain dangling from his shirt pocket could "probably" get caught in one of the pieces of machinery.

Supervisor Montgomery testified that, since the promulgation of the dress code in November and continuing through February, Respondent had requested employees to remove, *inter alia*, United Way pins, Christmas decoration pins, and religious pins. Respondent maintained that the wearing of nonwork-related items is an unacceptable safety risk, whereas wearing work-related items such as pens, rulers, and keychains or work-related keys is a risk inherent in factory work.[10] Respondent's employees work around machinery that have a series of cams, levers, and gears in which objects can become entangled, possibly drawing the employee, as well, into the machine's moving parts. Respondent's production supervisor, Lougene Williams, testified that there were two amputation accidents in 1980. Respondent, a manufacturer of surgical sponges used primarily in hospital operating rooms, further maintained that the dress code is necessary to insure noncontamination of its products and to comply with standards (called Good Manufacturing Practices or GMPs) set up by the United States Food and Drug Administration.

The Administrative Law Judge did not find, but suggested, that "there may well have been justification" for requiring removal of union insignia because of the presence of special circumstances based on safety grounds and product integrity, referring to *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945); he did find that Respondent failed to demonstrate that its action was based on the FDA's GMP requirements or on the maintenance of production and discipline in its operations. Citing the alleged wearing of nonwork-related

[7] *Mark I Tune-Up Centers*, 256 NLRB 898, 905 (1981).

[8] Cf. *Custom Recovery*, 230 NLRB 247 (1977). An employer may prohibit solicitation which interferes with production.

[9] Respondent's dress code provides for hair coverings and the wearing of uniforms and limits the wearing of jewelry to a single ring or a wedding-engagement ring set, a wristwatch fit snugly to the wrist, and a single necklace which does not extend over the uniform when the employee stands or bends. It is undisputed that Respondent established the dress code in October 1980, and made it effective in November 1980, well in advance of the union campaign.

[10] Respondent argued that keys are necessary to lock and unlock doors and equipment; leather pouches are used to shield and make safe the carrying of work knives; and pens are used to make Federally required entries in GMP logs, explained *infra*.

items by employees such as the stickpin and the keychains issued by Respondent, referred to above, the Administrative Law Judge stated that there was substantial evidence that the dress code policy was not routinely enforced. This alleged disparate enforcement, coupled with the finding that Respondent failed to mention the element of safety when it instructed employees Chalker, Oglesby, and Meeks to remove the union insignia, led the Administrative Law Judge to find that the enforcement of the dress code was not related to safety or product integrity. Consequently, he concluded that Respondent violated Section 8(a)(1) of the Act by prohibiting its employees from wearing union insignia while on the premises.

We cannot agree. While employees have the right to wear union insignia at work, employers have the right to take reasonable steps to ensure full and safe production of their product or to maintain discipline. Therefore, the Board holds that a rule which curtails that employee right is presumptively invalid unless special circumstances exist which make the rule necessary to maintain production or discipline, or to ensure safety.[11] Here there is ample record evidence to support a finding of special circumstances, based on safety considerations, to justify Respondent's dress code policy.

As a machine adjustor, Chalker often leans over the machine's moving parts during the repair and he, himself, admitted that the keychain dangling from this shirt pocket might have been drawn into the machine. Further, in finding disparate enforcement of the dress code policy, the Administrative Law Judge relied on evidence of isolated instances where employees wore nonwork-related items (such as a stickpin worn by an employee for several days previous to the Chalker-keychain incident), but ignored evidence that Respondent, between November 1980 and February 1981, required employees to remove such items as religious buttons, Christmas pins, and United Way buttons (as well as the above-referred-to stickpin after it was brought to Respondent's attention) as they were dress code violations. After finding special circumstances to exist and that "[Respondent] acted accordingly, it is immaterial that he failed to so act on all occasions . . . . Respondent's inefficiency on some occasions does not warrant a finding that occasions of efficiency amount to unfair labor practices even if some restriction of employee rights to propagandize is involved." *Hanes Hosiery*, 219 NLRB 338, 347 (1975).[12]

The Administrative Law Judge found that the failure by Respondent's management representatives to mention the element of safety when they told employees to remove the union insignia gave rise to an inference that the actual motivation for the request was not a safety concern. The dress code, as the record establishes, was promulgated for safety considerations. The reference to Chalker's keychain as a "dress code violation" was, therefore, synonymous with having said it posed a safety problem. Accordingly, we reverse the Administrative Law Judge's finding of this violation.

3. As stated previously, the Administrative Law Judge found that Respondent violated Section 8(a)(3) and (1) of the Act by Respondent's numerous warnings issued to Chalker (17 January, 10 February, 11 March, and 27 August), its unsatisfactory performance evaluation of Chalker (7 February), its refusal to transfer Chalker to the third shift (17 August), and its suspensions of Chalker (11 March and 27 August). The Administrative Law Judge found that Chalker was identified as a union supporter in about the third week of January; and thereafter, given Chalker's relatively unblemished 6-year work record and past satisfactory job ratings, Respondent's evaluation of Chalker changed abruptly and Chalker was monitored and disciplined in a disparate manner. The Administrative Law Judge found the 17 August transfer refusal and 27 August suspension and warning to be unlawful inasmuch as they were based on Respondent's unlawful actions taken in the period January through March. However, the Administrative Law Judge found that a verbal warning issued to Chalker for leaving the break area early on 29 July was not unlawful. According to the Administrative Law Judge, there was no corroboration for Chalker's contention that he left early because he had observed other employees doing the same.

Chalker testified that he was complying with Montgomery's directive that he stay in his work area until 3 or 4 months after his March suspension. He admitted having left his department on 29 July for his break, a "minute and a half" early, but stated that he did so in order to help another person change a heavy roll of paper. He testified that he had been observing other employees leaving their areas early as well as making calls and talking to other employees.

There was corroboration that such activities were occurring. For example, machine adjustor Rudolph Meeks testified that he left his department during worktime for various reasons prior to Janu-

[11] Mayrath Co., 132 NLRB 1628, 1629-30 (1961); *Andrews Wire Corp.*, 189 NLRB 108, 109 (1971).

[12] Having found that there existed the special circumstance of safety justifying Respondent's dress code, we find it unnecessary to pass on Respondent's contention that the dress code is necessary to ensure noncontamination of its products and to comply with GMPs.

ary, during the period January through March, and since March, without being disciplined; employee Debra Thomas testified that since March, as well as before, she left early for her official breaktime without being disciplined. This evidence of the disparate treatment of Chalker and the Administrative Law Judge's finding that Respondent committed three 8(a)(3) and (1) violations against Chalker after 29 July compel us to find, contrary to the Administrative Law Judge, that Respondent violated Section 8(a)(3) and (1) of the Act when it issued a verbal warning to Chalker on 29 July.

CONCLUSIONS OF LAW

1. Respondent The Kendall Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Paperworkers International Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By the unsatisfactory performance evaluation issued to Gary B. Chalker on 7 February 1981; the verbal warning issued to Chalker on 17 January 1981; the written warning issued to Chalker on 10 February 1981; the written warning and 3-day suspension issued to Chalker on 11 March 1981; the verbal warning issued to Chalker on 29 July 1981; the transfer refusal issued to Chalker on 17 August 1981; and the written warning and 10-day suspension issued to Chalker on 27 August 1981, Respondent has, in each instance, violated Section 8(a)(3) and (1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. Respondent did not violate Section 8(a)(1) of the Act by the alleged interrogations of employee Tanya Hickson, one by Supervisor Terri Montgomery, and one by Supervisor George Guest.

6. Respondent did not violate Section 8(a)(1) of the Act by requiring Chalker, for safety reasons, to remove union insignia.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, The Kendall Company, Augusta, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Paperworkers International Union, AFL–CIO, or any other labor organization, by discriminatorily issuing verbal or written warnings, unsatisfactory performance evaluations or suspensions, or discriminatorily refusing job transfers to employees, or otherwise discriminating against employees in any manner with regard to their hire or tenure of employment or any other term or condition of employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies and purposes of the Act:

(a) Offer Gary B. Chalker a transfer, from the second-shift to the third-shift position on which he bid on 17 August 1981, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Gary B. Chalker whole for any loss of earnings he may have suffered due to the discrimination practiced against him by paying him a sum equal to what he would have earned absent such discrimination, less any net interim earnings, plus interest.

(c) Expunge from its files any reference to the unsatisfactory performance evaluation issued to Gary B. Chalker on 7 February 1981; the verbal warning issued to Chalker on 17 January 1981; the written warning issued to Chalker on 10 February 1981; the written warning and 3-day suspension issued to Chalker on 11 March 1981; the verbal warning issued to Chalker on 29 July 1981; the transfer refusal issued to Chalker on 17 August 1981; and the written warning and 10-day suspension issued to Chalker on 27 August 1981; and notify him in writing that this has been done and that evidence of the above will not be used as a basis for future personnel actions against him.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Augusta, Georgia, facility copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Re-

[13] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

spondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discourage membership in United Paperworkers International Union, AFL-CIO, or any other labor organization, by discriminatorily issuing verbal or written warnings, unsatisfactory performance evaluations or suspensions, or discriminatorily refusing job transfers to employees, or otherwise discriminating against employees in any manner with regard to their hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Gary B. Chalker a transfer to the third-shift position on which he bid on 17 August 1981, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Gary B. Chalker whole for any loss of earnings he may have suffered due to the discrimination practiced against him by paying him a sum equal to what he would have earned, less any net interim earnings, plus interest.

WE WILL expunge from our files any reference to the unsatisfactory performance evaluation issued to Gary B. Chalker on 7 February 1981; the verbal warning issued to Chalker on 17 January 1981; the written warning issued to Chalker on 10 February 1981; the written warning and 3-day suspension issued to Chalker on 11 March 1981; the verbal warning issued to Chalker on 29 July 1981; the transfer refusal issued to Chalker on 17 August 1981; and the written warning and 10-day suspension issued to Chalker on 27 August 1981; and notify him in writing that this has been done and that evidence of the above will not be used as a basis for future personnel actions against him.

THE KENDALL COMPANY

Decision

STATEMENT OF THE CASE

LAWRENCE W. CULLEN,[1] Administrative Law Judge: These consolidated cases were heard by me on March 1 and 2, 1982, at Augusta, Georgia. The hearing was held pursuant to complaints consolidated by the Acting Regional Director for Region 10 of the National Labor Relations Board on October 15, 1981.[2] The complaint as amended in Case 10-CA-16802 is based on a charge filed by United Paperworkers International Union, AFL-CIO (hereinafter referred to as the Union) on March 20, 1981. The complaint in Case 10-CA-17396 is based on a charge filed by Gary B. Chalker, a individual, on behalf of himself on September 3, 1981. The complaint as amended in Case 10-CA-16802 alleges violations of Section 8(a)(1) and (3) of the National Labor Relations Act (hereinafter referred to as the Act) by The Kendall Company (hereinafter referred to as the Respondent). The complaint in Case 10-CA-17396 also alleges violations of Section 8(a)(1) and (3) of the Act by Respondent. Both complaints are joined by the separate answers of Respondent wherein it denied the commission of the alleged unfair labor practices.

Upon the entire record in this proceeding, including my observations of the witnesses who testified herein, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT AND ANALYSIS[3]

I. JURISDICTION

The complaint alleges, Respondent admits, and I find that it is a Massachusetts corporation, with an office and place of business located in Augusta, Georgia, where it is engaged in the manufacture of health care products and that during the past calendar year, which period is representative of all times material herein, it sold and shipped from its Augusta, Georgia, facility finished products valued in excess of $50,000 directly to customers located outside the State of Georgia. The complaint alleges, Respondent admits, and I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is, and has been at all times material

[1] The transcript is hereby corrected throughout to reflect that these cases were heard by me Lawrence W. Cullen, incorrectly designated by the reporter as Lawrence W. Cohen.

[2] All dates are in 1981 unless otherwise stated.

[3] The following includes a composite of the testimony of the witnesses at the hearing which testimony is credited, except insofar as specific credibility resolutions are made.

herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Alleged 8(a)(1) Violations*

1. The alleged interrogation of Hickson by Montgomery

Tanya Hickson, employed by Respondent as an orbitseal packer in department 37 on the second shift, testified that she signed a union card on approximately January 11. She was subsequently called into the conference room by Terri Marshall (Montgomery), who was then production supervisor of department 37, and that Montgomery inquired of Hickson regarding the reason for production in the packing department not "being met." Montgomery placed this conversation in January. Hickson was one of several packers in the same category but generally labeled the products that had been packed, an informally designated leadperson position which has since been reclassified to a higher position. Hickson testified that she told Montgomery that there was dissension between the packers concerning the Union and that during the course of this conversation she was asked by Montgomery whether she had signed a union card and she replied that she had done so. Hickson subsequently qualified this statement in her testimony and testified, "And then, it came into the conversation. It wasn't like she asked me, did I sign the card. It just came into it somehow. I don't even remember at what point. I can't say specifically, but in the conversation, it was asked, did I sign a card and I said, yes I did."

Montgomery testified that the conversation concerning production was initiated by Hickson near Hickson's machine and that she (Montgomery) suggested they go into an office, which they did. Montgomery testified that, during the course of the conversation concerning production, Hickson said that she thought that part of the production problems was caused by dissension among the employees concerning the Union. She testified that Hickson volunteered that she had signed a union card and stated, "I will tell you this, I did sign a card and I wish I hadn't done it." Montgomery testified she then told Hickson that the Respondent had some information which Hickson could read and that she encouraged Hickson to go to the union meetings to find out what it was all about.

Analysis

In view of the above conflicting testimony by Hickson concerning whether or not Montgomery asked her whether she had signed a union card and Montgomery's affirmative denial that she had done so and her specific recall of the statement of Hickson volunteering the information, I find Montgomery's version of this conversation the more reliable and I credit her testimony. Accordingly, I find that Montgomery did not engage in unlawful interrogation of Hickson and I will recommend dismissal of his allegation of the complaint.

2. The alleged interrogation of Hickson by Guest

Hickson testified that, shortly following her conversation with Montgomery, she was called into the office of George Guest (Respondent's department supervisor) to discuss production, that Guest asked her why production was not "being met," and that she told him she had signed a union card and wished she had not done so and that Guest then told her that she was signing her rights away, but that the signing of the card did not matter, since the election had not yet taken place.[4] Guest did not testify and Hickson's testimony concerning this conversation thus stands unrebutted. I credit Hickson's testimony.

Analysis

Although Hickson did not specify the exact words which were spoken by Guest during this meeting, I find that Guest was engaged in interrogation of Hickson concerning her union activities and those of her fellow employees. After Hickson volunteered to Montgomery her opinion that production in the packing department was being adversely affected as a result of dissension among the employees concerning the union campaign, and that she (Hickson) had signed a union card, Respondent became aware of Hickson's opinion concerning production in the packing department. I find that further interrogation of Hickson by Guest was calculated to lead Hickson into the area of discussion concerning the union activities of its employees. Accordingly, in the absence of any evidence presented by Respondent concerning the reason for further interrogation of Hickson by Guest concerning production problems, I find that, by its interrogation of Hickson by Guest, Respondent violated Section 8(a)(1) of the Act. See *Pope Maintenance Corp.*, 228 NLRB 326, 332 (1977), wherein the Administrative Law Judge found a violation of Sec. 8(a)(1) in instances of indirect interrogation. See also *Complas Industries*, 255 NLRB 1416 (1981).

3. The refusal of Respondent to allow its employees to wear the union keychain

The complaint further alleges that Respondent violated Section 8(a)(1) of the Act by prohibiting its employees from wearing union insignia on its premises. The insignia involved was a plastic disc button attached by a metal leader to a ring keychain. The button proclaims, "I'm for UPIU" (United Paperworkers International Union), on one side and has the union emblem imprinted on the reverse side (G.C. Exh. 2). Gary B. Chalker, who was employed as a machine adjustor in Respondent's department 37, testified that he wore the union keychain on his buttoned shirt pocket during the third week of January. The union campaign had commenced in early January. Chalker was told by his supervisor, Montgomery, to remove the keychain "because it was not part of the uniform." Chalker testified he asked Montgomery whether there was a written policy concerning this and was told

[4] It was admitted by Respondent and I find that Montgomery and Guest were supervisors within the meaning of Sec. 2(11) of the Act at all relevant times herein.

by her that she did not need to show it to him. Chalker removed the keychain. Shortly thereafter, on the same day, he noticed another employee with a stickpin on her collar and inquired of Montgomery whether this was part of the uniform and Montgomery replied that it was not and asked the employee to remove it. Chalker testified he had observed the employee wearing the stickpin for 6 days.

Chalker also testified that he had observed other employees wearing keychains with a plastic disc bearing the name "Kendall" and the message "Take care of yourself you are important to us." These keychains consist of a plastic disc attached directly to a metal keyring (G.C. Exh. 3). Machine adjustors Richard Oglesby and Rudolph Meeks also testified that they were required to remove the union insignia (G.C. Exh. 2) in March by management officials. Meeks testified that he was called into the office on the second day he wore the union keychain and was told by management official Juan Lopez "that I couldn't wear it because it was considered solicitation." Lopez did not testify, and the testimony of Meeks thus stands unrebutted. Chalker, Meeks, and Oglesby also testified that they and other employees wore various work-related items on their person such as pens, rulers, tool pouches, and tools, as well as work related keys on keychains. Oglesby testified that he carried personal as well as work-related keys on a keychain worn on his belt. Meeks also testified that he had for the past 3 years worn a belt buckle bearing the letters "NRA" designating the National Rifle Association.

Respondent contends, and its production manager, Lougene Williams, testified, that its actions in requiring the removal of union insignia in early 1981 were in accordance with its dress code policy established in October 1980 and made effective in November 1980 which limits the wearing of jewelry to a single ring or a wedding-engagement ring set, a wristwatch fit snugly to the wrist, and a single necklace which does not extend over the uniform when the employee stands or bends. The dress code also provides for hair coverings and the wearing of uniforms. Respondent contends that the wearing of nonwork-related items such as the dangling plastic disc on the keychain worn by Chalker are unacceptable safety risks as they may become caught in the moving parts of the machinery in the production departments as the employee works on the machinery, whereas certain work-related items such as pens, rulers, and keychains for work-related keys are dangers inherent in the nature of the job. Respondent contends further that the dress code, with its limitations on the wearing of personal items, is necessary to ensure noncontamination of the hospital and surgical products it manufactures and to comply with GMP's (Good Manufacturing Practices) to meet standards set by the United States Food and Drug Administration which audits Respondent's operations. Williams testified it is also necessary to promote a hospital image in the manufacture of its products. Respondent offered evidence through the testimony of Williams and Montgomery that between November 1980 and February 1981 employees had been required to remove such items as religious buttons, Christmas pins, and United Way buttons as they were dress code violations. On cross-examination Chalker acknowledged that the union insignia keychain dangling from his shirt might well have been caught in the moving parts of a machine on which he had been working. Montgomery testified that she had advised Chalker to remove the union insignia and had informed him that it was a dress code violation.

Analysis

It has long been recognized that the right of employees to wear union insignia is guaranteed by Section 7 of the Act and that rules which prohibit the wearing of union insignia by employees in the workplace, in the absence of "special circumstances" that they are essential to the maintenance of discipline and production, are violative of Section 8(a)(1) of the Act. See *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801-803; *Honda of America*, 260 NLRB 725 (1982). In assessing the special circumstances cited by an employer for a prohibition against the wearing of union insignia, the Board also considers whether there has been disparate enforcement of the rule (i.e. allowing the wearing of other items while prohibiting the wearing of union insignia). See *Honda of America, supra.*

In the instant case, it is undisputed that the dress code was promulgated in November 1980 well in advance of the union campaign in January 1981. Respondent contends that the wearing of jewelry should be limited in accordance with Good Manufacturing Practices to ensure the integrity of its hospital and surgical products and to meet safety standards and that there is evidence of special circumstances in this case which met the established criteria of special circumstances to maintain production. The evidence relating to safety of employees in their work with moving machinery appears particularly strong in the case involving Chalker wherein the union keychain was dangling from his pocket, which Chalker himself admitted could become entangled in the machinery. Moreover, there may be a logical rationale for eliminating safety hazards by prohibiting the wearing of nonwork-essential items while permitting the wearing of work-related items essential to the performance of the job. However, I find that, notwithstanding the testimony of Montgomery that she required employees to remove nonwork-related items other than union insignia, there was also substantial evidence that this policy was not routinely enforced but rather employees were permitted to wear a number of nonwork-related items such as the stickpin worn by an employee for several days and the keychains issued by Respondent. Moreover, the failure of Respondent's management representatives Montgomery, Lovell, and Lopez to mention the element of safety when they instructed employees Chalker, Oglesby, and Meeks to remove the union insignia gives rise to an inference that safety was not the true reason for Respondent's requirement that the employees remove the union insignia. Accordingly, while there may well have been justification for special circumstances on safety grounds for the removal of union insignia and/or to maintain the integrity of the products, the disparate enforcement of the dress code rule and the circumstances surrounding the requirement of its employees to remove union insignia

give rise to an inference, and I so find, that the true reason for the enforcement of the dress code rule with respect to the wearing of union insignia was not related to safety or integrity of the product. I also find that Respondent has failed to demonstrate that the prohibition of the wearing of union insignia was based on requirements of Good Manufacturing Practices set by the United States Food and Drug Administration or that it was based on the maintenance of production and discipline in its operations. This is particularly so insofar as some limited nonwork-related jewelry is permitted under Respondent's rule while union insignia was not. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act by requiring its employees to remove union insignia in January and March 1981 by the maintenance of its overly broad rule which prohibits by its terms all items not specifically allowed, thus prohibiting the wearing of union insignia while permitting the wearing of nonwork-related jewelry and by its disparate enforcement of such rule.

B. *The Alleged 8(a)(3) Violations*

The complaint in Case 10-CA-16802 alleges that employee Gary Chalker was reprimanded by Respondent on January 16, February 10, and March 11, 1981, and suspended by Respondent for a period of 3 days on March 11, 1981. The complaint in Case 10-CA-17396 alleges that Chalker was denied a transfer from the second shift to the third shift by Respondent on August 17, 1981, was issued a verbal warning by Respondent on July 29, 1981, and was suspended by Respondent for a period of 10 days on August 27, 1981. Both complaints allege that all such actions were taken by Respondent because Chalker engaged in concerted activities and that Respondent thereby violated Section 8(a)(3) and (1) of the Act.

At the hearing, Chalker testified he had been employed by Respondent for a period of 6 years, and had been a machine adjustor for 4 years. Chalker testified that he initially became involved in the union campaign during the second week of January.[5] Chalker signed a union card and wore a union keychain on his shirt pocket in January. On January 28 he, among several other employees, signed a "request to be a Voluntary Organizer for the United Paperworkers International Union" and authorized the disclosure of his name to Respondent as such. Respondent received a copy of this authorization bearing Chalker's signature on February 3. On March 5 and 11 he distributed union literature at the entrance to the plant to employees and supervisors. There was also evidence through the testimony of Respondent's supervisor, Terri Boyduy, that Chalker's union activities, particularly his handbilling activities, were discussed at supervisory meetings.

Chalker's duties as a machine adjustor involved the repair of machinery which had malfunctioned. Prior to January 1981 he was assigned to department 36 which was realigned and he became part of department 37 in December 1981. The departments consist of machines which in some cases are separated by aisles. In other cases they are not. Department 37 was supervised by Montgomery. Chalker's assignment to department 37 was made by an announcement on the bulletin board. Machine adjustor Meeks was assigned to department 36 and machine adjustor Oglesby was assigned to both departments but spent the greater percentage of his time in department 36 which was supervised by Supervisor Fred Lovell.

Prior to his identification as a union adherent as a result of the union keychain incident in January, Chalker had never been suspended, had received one written communication from Respondent concerning his conduct on a loading dock, and had received warnings for absenteeism, but had not been otherwise disciplined. He had been receiving satisfactory employee performance ratings in the past.

Chalker and other employees (machine adjustors Meeks and Oglesby) and production employees Debra Thomas and Karen L. (Dunn) Parker testified that employees regularly made personal telephone calls during working time. Chalker and other employees testified that employees took informal breaks and congregated in the restroom area which also contained a locker room during working time and left their work areas prior to breaktime in order to shut down the machines and clean up. Chalker testified that, prior to his identification as a union adherent in January, he utilized the telephone, visited other departments, particularly department 36 and discussed work matters with fellow adjusters Meeks and Oglesby and utilized the restroom without incident or any restraints by Respondent's management.

Chalker testified that on the same day he was told to remove the union keychain by Montgomery, he proceeded to utilize one of two telephones in the hallway and was told by Department Supervisor George Guest that he could not use the telephone all night, whereas he had utilized the telephone in the past without incident. Chalker also testified that Meeks was using the second phone at this time in Guest's presence. Guest did not comment concerning Meek's usage of the telephone. Since Guest did not testify, Chalker's testimony in this regard stands unrebutted. On February 10 Chalker was given a written reprimand signed by Supervisor Montgomery (Marshall) for his "overall poor and negligent job performance," which reprimand cited his alleged excessive time spent on the telephone on January 17 when he was "counseled by the Department Supervisor" (Guest), his alleged failure to complete a changeover on a job, his failure to make an entry in the adjuster's log, his absence in the work area and his presence in the restroom at the time of a need for repair, his failure to follow an established procedure of turning in his timecard and the "low rating" with "below average ratings" in "job knowledge, following company and department rules, dependability, adaptability, cooperation with peers, attitude and attendance" (G.C. Exh. 4). This refers to his February 7, annual appraisal by Montgomery (Resp. Exh. 12). Montgomery had supervised Chalker since October 1980. On March 11, Chalker was given a 3-day suspension by Montgomery which cited the February 10 reprimand and Chalker's alleged excessive time spent on

[5] The election was held on March 26.

the telephone on March 2, his having been out of his department on March 9 talking to other adjustors, and his refusal to stay in his department. Chalker testified he had never previously been disciplined for using the telephone during working time, had previously put a late entry in the logbook the following day without being disciplined, had been in the restroom only 3 or 4 minutes on February 5 when Montgomery was unable to find him to repair a machine, and had never been disciplined for being in the restroom before, had previously, on several occasions, turned his timecard into the office rather than his supervisor and had received no discipline therefor, and had never received a below-average appraisal prior to the February 7, 1981, appraisal by Montgomery. The appraisal of Chalker by Montgomery listed his performance as below average overall as a result of a below-average appraisal in the categories of job knowledge, following company and department rules, dependability, adaptability, cooperation with peers, attitude, and attendance (Resp. Exh. 12).

The March 11 suspension of Chalker for a period of 3 days was effective March 12. The suspension letter from Montgomery to Chalker (G.C. Exh. 5) cited the previous written reprimand and an instance of alleged excessive time spent by Chalker on the telephone on March 2 and an instance on March 9 when Chalker was observed by Montgomery and another supervisor (Mike Bresnahan) talking to machine adjustors in another work area at which time Chalker allegedly threatened to take Montgomery to court and told her he would be in department 36 (outside his work area) if Montgomery needed him. Chalker generally acknowledged that the incidents had occurred but testified that he was discussing a machine in department 36 with the other adjustors as had been his previous practice in the past and that he had only been in the department approximately 4 minutes. Chalker testified that he had previously normally gone to another department two or three times a shift without receiving comments or discipline from any supervisor. He denied having told Montgomery that she could find him in department 36.

Chalker testified that, after his suspension in March, he adhered to the restrictions imposed on him by Montgomery. Montgomery was transferred to another department and was replaced by Supervisor Terri Boyduy.[6] Chalker testified that Boyduy advised him she had reviewed his file and informed him that he "had a pretty bad record." On August 17 Chalker signed a bid sheet which was posted on the bulletin board but was informed by Departmental Supervisor Guest and by Supervisor Boyduy that he was ineligible as a result of his suspension within the preceding 6-month period in accordance with Respondent's advancement opportunity procedure which prohibits transfers of employees who have received a written warning or greater discipline during the preceding 6 month period. As Guest did not testify this testimony stands unrebutted. Boyduy who testified for Respondent acknowledged that she had so informed Chalker. Williams testified that Chalker would have also been ineligible as a result of his unsatisfactory performance rating in February. On August 27 Chalker was suspended by Boyduy for a period of 10 days commencing on August 28 by a written suspension letter outlining several alleged instances of unsatisfactory performance by Chalker as well as his prior suspension in March as the basis therefor. The suspension letter (G.C. Exh. 6) further provided that in the event Chalker failed "to correct your actions and continued to be out of work area an excessive amount of time, your employment with the company will be terminated." The letter cited an instance on July 29, wherein Boyduy issued a verbal warning to Chalker for leaving the job early for a dinner break when "your assistance was needed," a 5-minute telephone call made by Chalker on August 6, Chalker's use of the restroom on August 7, his leaving early for a break on August 10 "when a machine was down," his use of the telephone on two occasions on August 11, his leaving early for dinner on August 13, and his presence in another department talking to an adjustor, and his use of the restroom on two occasions within a half-hour period on August 14. Chalker acknowledged having left early for a break on July 27 and contended that he had left a minute and a half early as he required the help of another person to change a heavy roll of paper on the machine and was then called into the office by Boyduy and given a warning for leaving prior to the start of the breaktime. Chalker testified he and other employees had previously left early for breaks in the presence of supervisors without the incurrence of discipline. Chalker acknowledged that he had been out of the department on the various dates cited by Boyduy in her letter of August 27 and testified that he had resumed his prior practice of leaving his department 3 or 4 months after his suspension in March as a result of his observation of "other employees doing the same thing." Chalker's observations of other employees leaving the workplace to take breaks early, make telephone calls, and talk to other employees were corroborated by the testimony of employees Oglesby, Meeks, Thomas, and Parker although Meeks testified that this was subsequently "tightened up" by Respondent.

Respondent contends that its discipline of Chalker was a legitimate response on the part of management, in accordance with its system of progressive discipline, to Chalker's failure or refusal to perform his job in a satisfactory manner, his failure or refusal to be available in his department in case of machinery breakdowns, and his failure or refusal to otherwise comply with the reasonable directions of its supervisors. Respondent, in its brief, contends that Chalker "was guilty on numerous occasions of inattendance to his job duties," "became belligerant, indeed defiant, in his refusal to stay in his assigned work area," "was treated fairly and in the same fashion as other similarly situated employees," "was only moderately active on behalf of the Union," and "no antiunion animus was shown." Respondent called Supervisor Boyduy as a witness, who acknowledged that some machine operators had shut down their machines early in July when she assumed supervision of the department

[6] I find on the basis of the undisputed credible evidence of her authority and the exercise thereof that Boyduy was a supervisor within the meaning of Sec. 2(11) of the Act at all relevant times herein.

but contended she discussed the matter with them and they ceased to do so.

Respondent Supervisor Montgomery testified that she had supervised Chalker since October 1980 but had not previously observed any unusual problem with Chalker's work performance or inattendance to duties, or excessive use of the telephone prior to January. She testified, with respect to her appraisal of Chalker's knowledge of the job, she is unable to repair the machines but evaluated Chalker's performance as unsatisfactory as a result of repeat problems with machine breakdowns following their repair by Chalker. Supervisor Boyduy testified that, in the first 2 weeks following her assumption of the supervision of Chalker, in July, she observed him leaving early for breaks and leaving unfinished work and issued him a verbal warning on July 29, and that, between July 29 until Chalker's suspension of August 27, Chalker continued to leave early for breaks, stay in the restroom for lengthy periods, and use the telephone two or three times a night, that Chalker was not in the department when he was required to repair the machines, that she recommended his discharge but that he was suspended for a period of 10 days. Additionally, Fred Lovell, the supervisor of department 36, testified that adjustor Meeks utilized the telephone with his permission several times a night in order to contact his children at home as Meek's wife also worked at night. Lovell testified he did not observe Oglesby use the telephone as frequently as Meeks. Meeks testified he did not have special permission to do so. Montgomery testified she did not observe employees other than Chalker use the telephone excessively or any other problem with them leaving early for breaks. Lovell also testified that Chalker "was a capable adjustor in the Webcol area" and that he (Lovell) sometimes requested Chalker's supervisor to have Chalker assist when there were multiple problems in his department.

Analysis

I find that the General Counsel has made a *prima facie* case of violations of Section 8(a)(3) and (1) of the Act by Respondent's issuance of a reprimand to Chalker on January 17 for excessive telephone usage, its below-average appraisals of Chalker on February 7, its written warning to Chalker on February 10, and its issuance of the warning letter and 3-day suspension to Chalker on March 11, and by Respondent's refusal to transfer Chalker from the second to the third shift on August 17, and by its issuance of the verbal warning to Chalker on July 29, and by its issuance of a 10-day suspension to Chalker on August 27. I find that the evidence presented by the General Counsel supports a finding that Chalker, who had a relatively unblemished work record in 6 years of employment and whose job performance in the past had been rated satisfactorily by Respondent, was identified in the third week of January as a union supporter, was closely monitored thereafter and was issued a multitude of disciplinary warnings and an unsatisfactory performance appraisal, that the monitoring of Chalker continued and that he was marched down the path of Respondent's progressive disciplinary system with his discharge imminent as threatened by Respondent in the letter of August 27 suspending him for a period of 10 days. I find that the General Counsel has made a *prima facie* case showing disparate treatment of Chalker as compared to other employees in the regulation and monitoring of his work activities. The record amply demonstrates that other employees, particularly machine adjustors, were allowed to leave their work stations during working time, discuss work matters with other employees, leave work early for breaks, and engage in personal telephone calls condoned by management. Further, I find that union animus of Respondent was demonstrated by the unrebutted testimony of employee Hickson that Department Supervisor Guest informed her during his unlawful interrogation of Hickson that she could be signing her rights away by signing a union card. As found *supra* herein there were independent violations of the Act committed by Respondent by its interrogation of Hickson by Guest and by the maintenance and the disparate enforcement of its broad dress code rules prohibiting the wearing of union insignia by employees. Moreover, the abrupt change in Respondent's assessment of Chalker from an apparently competent and satisfactory employee prior to his display of his union sympathies in January 1981 to its almost incessant and close monitoring of every aspect of his movements, personal telephone calls, time spent in the restroom, and other activities in the absence of any evidence of such close monitoring of other employees gives rise to an inference that Respondent's motives at the outset in monitoring Chalker's activities were to curb his union activities and to closely scrutinize a known union adherent. The timing of this change is particularly supportive of this inference.

Respondent presented evidence principally through the testimony of Department Supervisors Montgomery and Boyduy that Chalker's work performance was inadequate and his inattention to duty was so flagrant as to stand out from all other employees and require the verbal and written warnings and suspension imposed on him. Montgomery had been Chalker's supervisor since October 1980. Yet the yearly appraisal of February 7 was apparently made by her on the basis of her own observations during this period. I do not credit Montgomery's testimony that Chalker's job performance was unsatisfactory as indicated on the appraisal, the basis of which with respect to his job knowledge was the occurrence of recurring breakdowns of the machines shortly after Chalker had repaired them although no supporting data was presented to substantiate this testimony and Montgomery admitted she herself was not knowledgeable concerning the repair of the machines. Moreover, Supervisor Lovell testified that Chalker was a capable adjustor in the Webcol area. I also do not credit Montgomery's testimony that she noticed problems with Chalker's inattendance to his duties in January although she acknowledged she had not noticed such problems between October and January. Rather, it appears that Chalker's difficulties stem from his identification as a union adherent.

Consequently, I find that the below-average appraisal issued to Chalker and the warnings and suspension issued to Chalker in the January through March period were

imposed by Respondent on Chalker to discourage the participation of a known union adherent in the Union's campaign, and were thus violative of Section 8(a)(3) and (1) of the Act. Inasmuch as the suspension of August 29 and the refusal to transfer Chalker on August 17 were based on Respondent's unlawful actions taken against Chalker in January, February, and March, the said August suspension and the refusal to transfer Chalker were unlawful. I find that the Respondent has failed to rebut the *prima facie* case established by the General Counsel of violations of the Act in each instance. See *Wright Line*, 251 NLRB 1083 (1980). See also *Kevah Konner, Inc.*, 256 NLRB 61 (1981), with respect to the restriction of the use of the telephone imposed on a union adherent; *Woonsocket Health Centre*, 245 NLRB 652 (1979), with respect to restrictions on breaks and the issuance of more written warnings in order to discourage union activity; *S. S. Kresge Co.*, 229 NLRB 10 (1977), with respect to restriction of movements in the workplace of a union adherent; *Cone Mills Corp.*, 245 NLRB 159 (1979), with respect to disparate enforcement of work rules, and *Claxton Mfg Co.*, 235 NLRB 261 (1978), where the Administrative Law Judge considered the employer's knowledge of the union campaign, its animus to the union, the disparity of the disciplinary action, and the timing thereof in finding the discipline of a union adherent violative of the Act. I find, however, that the verbal warning issued to Chalker for leaving the break area early on July 29 was not unlawful. This occurred at a time when there was no ongoing union activity, substantially after the March suspension and following a period when Chalker testified he was adhering to the directions of Montgomery to stay in the department. Chalker testified that he commenced to undertake a more liberalized attitude toward his work activities when he observed other employees doing so. However, there was no corroboration by other witnesses that such activities were in fact occurring. Boyduy testified she spoke with certain employees who left early in July and this ended the problem. It appears that Chalker was testing management's right to require his presence in the department. Under these circumstances, I do not find Boyduy's warning issued to Chalker for leaving early on a break to be violative of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices of Respondent as found in section III, in connection with Respondent's operations as found in section I, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to disputes burdening and obstructing the flow of commerce.

CONCLUSIONS OF LAW

1. Respondent, The Kendall Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Paperworkers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogation of its employee, Tanya Hickson, concerning her union sympathies and those of her fellow employees, engaged in by its departmental supervisor, George Guest, Respondent has violated Section 8(a)(1) of the Act.

4. By the maintenance and enforcement of a broad dress code rule, refusing to permit its employees to wear union insignia on the premises while tolerating the use of other insignia and jewelry worn by its employees, Respondent has violated Section 8(a)(1) of the Act.

5. By the unsatisfactory performance evaluation of Gary B. Chalker on February 7, 1981, and by the issuance of a reprimand to its employee Gary B. Chalker on January 17, 1981; a subsequent written warning to Chalker on February 10, 1981; its issuance of a written warning and a 3-day suspension to Chalker on March 11, 1981; its refusal to transfer Chalker from the second to the third shift on August 17, 1981; and by its issuance of a written warning and a 10-day suspension to Chalker on August 27, 1981, Respondent has, in each instance, violated Section 8(a)(3) and (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. Respondent did not violate the Act by the alleged interrogation of employee Tanya Hickson by Supervisor Terri Montgomery.

8. Respondent did not violate the Act by the issuance of the verbal warning by Supervisor Terri Boyduy to employee Gary B. Chalker on July 29, 1981.

THE REMEDY

Having found that Respondent has violated Section 8(a)(1) and (3) of the Act, it shall be ordered to cease and desist therefrom and from any other unlawful activity and to take certain affirmative actions designed to effectuate the policies of the Act. Accordingly, I recommend that Respondent be required to post the appropriate informational notice to employees in appropriate places at its Augusta, Georgia, facility, and I recommend that Respondent rescind the unsatisfactory performance evaluation, the warnings, and the suspensions issued to Gary B. Chalker, expunge his personnel record of all references to the aforesaid unsatisfactory performance evaluation and unlawful disciplinary action taken against him and permit him to transfer from the second to the third shift with such transfer to be retroactive to August 17, 1981, with respect to all seniority and loss of earnings and benefits occurring from that date and that Respondent make Gary B. Chalker whole for all losses due to discrimination against him and cease and desist from any other unfair labor practices. All loss of earnings and other benefits shall be computed with interest in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[Recommended Order omitted from publication.]